



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON DC 20370-5100

SMC
Docket No: 02803-00
29 June 2000

86 [REDACTED] USMC
[REDACTED]
[REDACTED]

Dear Sergeant [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of title 10 of the United States Code, section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 29 June 2000. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies. In addition, the Board considered the report of the Headquarters Marine Corps Performance Evaluation Review Board (PERB), dated 14 April 2000, a copy of which is attached.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice. In this connection, the Board substantially concurred with the comments contained in the report of the PERB. The Board was unable to find that input from your noncommissioned officer in charge and your staff noncommissioned officer in charge was neither sought nor taken into account in completing the contested fitness report. They noted that the contested fitness report need not be consistent with the prior report signed by the same reviewing officer, but a different reporting senior. In view of the above, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official

records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER
Executive Director

Enclosure



DEPARTMENT OF THE NAVY
HEADQUARTERS UNITED STATES MARINE CORPS
3280 RUSSELL ROAD
QUANTICO, VIRGINIA 22134-5103

2803-99
IN REPLY REFER TO:
1610
MMER/PERB
14 APR 2000

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS

Subj: MARINE CORPS PERFORMANCE EVALUATION REVIEW BOARD (PERB)
ADVISORY OPINION ON BCNR APPLICATION IN THE CASE OF
SERGEANT [REDACTED] USMC

Ref: (a) Sergeant [REDACTED] DD Form 149 of 7 Feb 00
(b) MCO P1610.7D w/Ch 1-2

1. Per MCO 1610.11C, the Performance Evaluation Review Board, with three members present, met on 12 April 2000 to consider Sergeant [REDACTED] petition contained in reference (a). Removal of the fitness report for the period 960817 to 970316 (TD) was requested. Reference (b) is the performance evaluation directive governing submission of the report.

2. The petitioner contends the report is inconsistent with his previous evaluation and disclaims any counseling on shortcomings or needed improvement. He also indicates he was required to sign the report as "adverse" even though all Section B marks were "average" or higher; that the Reviewing Officer had virtually no observation of his performance; and input from his NCOIC and SNCOIC was neither sought nor taken into consideration. To support his appeal, the petitioner furnishes a statement from Staff Sergeant [REDACTED] his noncommissioned officer in charge.

3. In its proceedings, the PERB concluded that the report is both administratively correct and procedurally complete as written and filed. The following is offered as relevant:

a. The petitioner is correct in his inference that the report is not adverse by virtue of any Section B markings. However, what renders the report "adverse" and necessitated the petitioner's signature in Item 24, are the comments in the Section C narrative. In this regard, the Board finds that the report was correctly processed per the provisions of Chapter 5 of reference (b). Whether or not the Reviewing Officer had first-hand observation of the petitioner's daily performance has not been documented. Even if that were proven to be the case, that fact does not preclude or somehow diminish his efforts to resolve and adjudicate the report.

b. Although the petitioner disclaims counseling, the Board is quick to draw attention to the first sentence in his official

(3) PERB

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rebuttal (i.e., "I have only been counseled three times by RS."). We would also expect that during the seven months covered by the challenged fitness report, the petitioner received some periodic feedback concerning his performance.

c. While the letter from Staff Sergeant [REDACTED] is complimentary and supportive, the Board finds nothing that would cause it to question the overall accuracy and fairness of the fitness report at issue. To this end, the Board concludes that the petitioner has failed to meet the burden of proof necessary to establish the existence of either an error or an injustice.

4. The Board's opinion, based on deliberation and secret ballot vote, is that the contested fitness report should remain a part of Sergeant [REDACTED] official military record.

5. The case is forwarded for final action.

[REDACTED]
Chairperson, Performance
Evaluation Review Board
Personnel Management Division
Manpower and Reserve Affairs
Department
By direction of the Commandant
of the Marine Corps